

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 424 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

RAMESH VASHRAM

Versus

KOLI SUKHA RAYJI DELETED AS ON OFFICE SUB.

Appearance:

MR AS TRIVEDI FOR MR RR TRIVEDI for Petitioner
DELETED for Respondent No. 1

MR AM KAPADIA FOR MR SB VAKIL for Res. Nos. 3, 4

CORAM : MR.JUSTICE J.R.VORA

Date of decision:30/07/1999

C.A.V. JUDGEMENT

1. This First Appeal is filed by the Appellant original petitioner against the award and decree passed by the Motor Accident Claims Tribunal (Auxiliary),

Rajkot, in Claim Petition No. 666 of 1982. As per brief facts of the case, the accident in question occurred on 28th July, 1982 at about 12.00 noon. The petitioner appellant was going to Gondal from Jetpur on motor cycle bearing No. RRB 9783 with one person as pillion rider.

A truck bearing No. GTY 4540 was coming from opposite direction on the highway. This truck took a sudden turn on its right hand side without any signal. Seeing this, the applicant took his motor cycle towards his right i.e. wrong side and dashed with the rear portion of the truck and received injuries. The claim was filed for the compensation of Rs.1 lac. The vehicle was insured with the New India Insurance Company i.e. original Opponent No.3. Vehicle i.e. truck was owned by opponent No.4 M/s V.S. Engineers, Anjar and was driven by opponent No.1 Koli Sukha Ravaji of Atkot. Opponent No.1 filed reply vide Exhibit 27 and Insurer filed its written statement at Exhibit 28, wherein the negligence on the part of the driver was totally denied. After recording of the evidence, the Tribunal came to the conclusion that opponent No.1 was negligent to the extent of 75% and the petitioner was negligent to the extent of 25% in occurring of the accident and that the petitioner was entitled to an amount of Rs. 15,000/- by way of compensation from the opponents.

2. Being aggrieved by this award of the Tribunal, which is pronounced on 31st day of January, 1985, this First Appeal is filed by the appellant on the ground that the learned Tribunal erred in arriving at conclusion that the petitioner was negligent to the extent of 25%, and that the Tribunal erred in awarding less compensation on the head of pain, shock and suffering and future economic loss.

3. Learned Counsel Mr. A.S..Trivedi for learned Advocate Mr. R.R. Trivedi on behalf of the appellant and learned Advocate Mr.A.M. Kapadia for learned counsel Mr. S.B. Vakil on behalf of the opponents were heard. Mr. Trivedi on behalf of the petitioner has taken me to the evidence on the record and has stated that the father of the applicant though is not an eye witness, one eye witness Mr. Praful Kumar has been examined on behalf of the petitioner. The driver i.e. opponent No.1 is also examined and there is no reason to disbelieve the eye witness of Proful Kumar and come to a conclusion that opponent No.1 was solely responsible for causing this

accident. Learned Advocate Mr. Trivedi also argued that Dr. Kakkad, vide Exhi. 48 has been examined, who is a Psychiatric and he has deposed that a mental disorder has been found in the petitioner and this mental disorder may be due to some physical injury because brain tissues were damaged. Therefore, it is vehemently argued on behalf of the petitioner by Mr. Trivedi that learned Tribunal has erred in awarding less compensation on the head of pain, shock and suffering and that towards future economic loss. On the other hand, Mr. Kapadia on behalf of opponents have urged that petitioner was examined by Dr. P.R. Thakore, a well known Neurologist and he has given a certificate. Though there is no neurological deficiency so far as the petitioner is concerned and, therefore, he referred the patient to Psychiatric. Mr. Kapadia further urged that when there is no neurological deficiency due to the injury, the question of awarding compensation for the future economic loss would not arise

at all. The mental disorder which is described by the petitioner, according to Mr. Kapadia, learned advocate, may be due to some other reasons also and not due to injury which is received in the accident. Mr. Kapadia, learned counsel also urged that learned Tribunal was right in holding that the petitioner was negligent to the extent of 25% because he had applied brakes of the motor cycle suddenly and was dashed against the truck and fallen down.

3. Considering the rival contentions of both the sides, following two points emerge for the determination.

- (i) whether learned Tribunal erred in coming to the conclusion that the petitioner was negligent to the extent of 25 percent;
- (2) whether the learned Tribunal erred in awarding less compensation towards the head on pain, shock and suffering and not awarding any compensation towards future economic loss.

4. So far as the first point that the negligence is concerned, learned Tribunal has come to the conclusion that since the petitioner was found slipped on the right side of the road, according to the Tribunal, this would happen only if sudden brake is applied by the petitioner. According to the learned Tribunal, as sudden application of to a brake two wheeler, and the slipping of the

vehicle on applying of the sudden brake, invariably denote an excessive speed of the petitioner on motor cycle, and therefore, the applicant was considered to be negligent to the extent of 25%.

5. Learned Tribunal erred in deciding this issue because in this case, the petitioner could not be examined but eye witness Proful Kumar was examined, and he has said that he was with the applicant in another scooter with one Mukeshbhai was his pillion rider. They were on moderate speed and the applicant was also driving his motor cycle on moderate speed. At the spot of the accident, the truck in question was coming from opposite direction. The truck was in excessive speed and without any signal, the truck took a right turn and due to this, the applicant had to take his motor cycle on the right side of the road i.e. the wrong side to avoid accident, but even then, the motor cycle was dashed on the rear side of the truck and he received the injuries. There is no reason to disbelieve this witness. Even the slipping of the motor cycle would denote that the petitioner tried to avoid the accident. This would happen only if the truck was in excessive speed and it took sudden right turn. This definitely suggests that the truck was in excessive speed and took a sudden right turn without any signal. The fact of slipping of a motor cycle would not suggest an excessive speed of the motor cycle as concluded by the Tribunal, but it will suggest that the truck was in a full speed and took a right turn which forced the applicant to take his motor cycle towards

right side of the road i.e. the wrong side, to avoid the accident and in this attempt he slipped and this is substantiated by eye witness Praful Kumar, whose statement also recorded by the police in a criminal case against the opponent No.1. Opponent No.1 has also examined in this case at Exh. 54, but, his evidence is neither here nor there. Therefore, the Tribunal erred in holding that the petitioner was negligent in causing the accident to the extent of 25%. The finding of the Tribunal is set aside and it is concluded that it was the opponent No.1 who was solely responsible and negligent in causing the accident.

6. So far point No.2, i.e. compensation is concerned, the petitioner first took the treatment in the Government Hospital at Gondal. The certificate issued by the Hospital is produced at Exh.50, wherein C.L.W. muscle deep on the left side of parital region and also

C.L.W. on the right side of front parital region and some abrasions were found. Then, the petitioner was referred to the Rajkot Hospital, but no papers were received from the Rajkot Hospital. Thereafter, he took the treatment before Dr. Pradyot Thakore at Ahmedabad on 3rd August, 1984. It appears that the petitioner took some treatment from Dr.Pradyot Tahkore and he was admitted as an indoor patient. It is also on the record that the petitioner took treatment from ENT Surgeon Dr.Kansagara and operation was also carried out by him on 28th August, 1982, and the certificate is produced at Exhibit 44. Dr. Pradyot Thakore thereafter referred the

petitioner to Dr. Kakkad of the Rajkot because the petitioner developed forgetfulness, loss of memory, etc. and from this fact, the learned Tribunal has awarded Rs.10,000/- towards mental pain, shock and suffering to the petitioner. It clearly appears that the learned Tribunal has erred in awarding in less amount of compensation towards this head. The petitioner had to suffer protracted treatment and had to go for one hospital to another. He took treatment from Neurologist also, and this fact on evidence is sufficient to denote that a global amount of Rs.25,000/- towards mental shock and suffering ought to have been awarded to the petitioner having regard to the history of the medical treatment which he has received during this long period and, therefore, the compensation of Rs.10,000/- awarded by the Tribunal towards the mental shock and suffering is set aside and is held that the petitioner is entitled to the compensation of Rs.25,000/- towards on this head of mental shock and suffering. Learned Tribunal has awarded Rs.5,000/- to the petitioner for the medical expenses, but the petitioner had to go from Gondal hospital to Rajkot and from Rajkot to Ahmedabad and again to Rajkot, and this protracted treatment the petitioner has received, which invariably involved the expenditure, which would be more than Rs.5,000/- already awarded by the Tribunal and, therefore, the compensation on this head is also required to be increased to Rs.10,000/- from

Rs.5,000/- and this will be the compensation towards the medical expenses and other charges and it is quite reasonable to award Rs.10,000/- for these expenses. Learned Tribunal has awarded Rs. 3,000/- for the loss of actual income. It is in evidence that the petitioner was

doing the business of flower in Jetpur and he was earning an amount of Rs.1,000/- per month. The learned Tribunal came to the conclusion that the income of the petitioner can reasonable be fixed at Rs.500/- per month and since the petitioner was, as per the evidence, not able to work for six months, the petitioner was entitled to Rs.3,000/towards the actual loss of income for the six months, but the Tribunal erred in fixing the income of the petitioner. There is evidence that the petitioner was doing the business of flower, and was earning Rs.1,000/- per month and, therefore, it is quite reasonable to fix the income of the petitioner at Rs.1,000/- per month and to award Rs.6,000/- in all for the loss of income of the six months instead of Rs.3,000/- which has been awarded towards this head by the Tribunal and hence the petitioner is entitled to Rs.6,000/- for the loss of income for the six months for which he was not able to do his business. So far as the property damaged is concerned, some amount has been awarded to the petitioner for the damage to the motor cycle by the Insurance Company and, therefore, the Tribunal has rightly awarded Rs.2,000/- for the damage to the motor cycle.

7. Mr. Trivedi has vehemently argued that the Tribunal has erred in not awarding any compensation towards the loss of future income. Due to injuries in the accident, the petitioner suffered mental disorder, but this argument of Mr. Trivedi cannot be accepted because Dr. Kakkad has very categorically stated that this mental disorder may or may not be due to the injury on the head. Now, taking into consideration, the history of the medical treatment, Dr. Pradyot Thakore has specifically certified that the petitioner's behaviour dazedly, excessive talkativeness, but there was no neurological defect, and therefore, he advised for consulting Psychiatric. From this evidence, it is clear that the petitioner could not establish the nexus between the mental order and the injury which petitioner received in the accident. The evidence of Dr. Kakad at Exh.49 denotes that such a mental disorder, which is revealed in the petitioner may be by birth or by any physical injuries. However, referring to the history of the treatment, there was no neurological deficiency at all in the petitioner, and that due to injury, there was no neurological defect. In these circumstances, the petitioner failed to prove that the mental disorder was a

direct reason to the injury which the petitioner received in the accident and, therefore, the Tribunal was correct in not awarding any compensation towards the future economic loss.

11. Some controversy was raised regarding the rate of interest by both the learned counsels. Learned Tribunal has awarded 6 per cent interest. The awarding of interest is discretionary. But, the trend of the courts shows that the 6 per cent awarding of interest even in 1982 when the accident occurred was on the lower side and in my opinion, since the accident occurred in 1982, the rate of interest of 12 per cent is a reasonable rate, by which the compensation can be awarded to the petitioner.

12. In this view of the matter, the petitioner is entitled to following amount of compensation on different heads:

(a) Rs. 25,000/- towards mental shock and
suffering.

(b) Rs.10,000/- towards medical and other
incidental charges.

(c) Rs. 6,000/- for actual loss of income

(d) Rs. 2,000/- for damage to the
property i.e. motor
cycle.

Rs. 43,000/- Total

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The petitioner is entitled to recover an amount of Rs. 43,000/- jointly and severally from opponents No. 1, 3 and 4 with costs through out along with interest at the rate of 12% per annum from the date of the application till realisation.

13. Out of which, the amount of Rs. 12,000/- as ordered by the Tribunal will be invested for the terms and conditions mentioned by the Tribunal in its Award

dated 31.01.1985. The remaining amount be paid to the petitioner by account payee cheque after deducting the amount of court fees, if any.

14. This First Appeal is allowed to the extent stated above and the Award of the learned Tribunal is modified to the extent above.

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